



# Instructions for Form FTB 3560

## S Corporation Election or Termination/Revocation

References in these instructions are to the Internal Revenue Code (IRC) as of **January 1, 1993**, and to the California Revenue and Taxation Code (R&TC).

### General Information

An S corporation is a small business corporation for which an election under IRC Section 1362(a) is in effect. A C corporation is a corporation other than an S corporation.

For purposes of these instructions, the term "income year" means "taxable year" for corporations taxed under Chapter 3 of the Bank and Corporation Tax Law and means "taxable year" under the IRC.

Corporations that elect federal S corporation status are deemed to have made a California S corporation election on the same date as the federal election. These corporations must report the federal S corporation election to the Franchise Tax Board (FTB), by filing form FTB 3560.

### A Purpose of Form

This form is used by a:

- California corporation to report a federal S corporation election;
- federal S corporation to elect to become a California C corporation;
- California C corporation, that is a federal S corporation, to elect to become a California S corporation;
- California S corporation to report a federal termination; and
- California S corporation that wants to terminate the California S corporation election by revocation, without terminating the federal S corporation election.

### B Report of Federal Election

To report the federal election, complete Part I; Part II, box 1; and Part IV. Attach a copy of federal Form 2553, Election by a Small Business Corporation. Include the California Corporation number to ensure proper handling.

### C California Elections

California C corporations that want to become California S corporations must first have in effect a valid federal S corporation election. See IRC Sections 1361, 1362 and 1378 and federal Form 2553, for information on valid federal elections.

For either of the following elections, the FTB will notify the corporation only if the election is not approved.

**Election by a California C corporation, that is a federal S corporation, to become a California S corporation.** A federal S corporation that previously elected to become a California C corporation may elect to become a California S corporation as long as the California S corporation status was not terminated or revoked in the past five years.

To make this election complete Part I; Part II, box 3; Part III; and Part IV.

**Election by a federal S corporation to become a California C corporation.** Under California law, a federal S corporation is a California S corporation unless the corporation properly elects otherwise. If a federal S corporation does not want to be treated as a California S corporation and it is incorporated or qualified to do business in California, it may elect California C corporation status.

To make this election, follow the instructions in General Information D, "Termination/Revocation," and check Part II, box 2, instead of box 5.

For this election to be effective, the corporation must file form FTB 3560 by the date shown in General Information E, "Termination by revocation." The

FTB will disregard the election if it is not filed when it is due.

### D Termination/Revocation

A corporation's S corporation status will be terminated if it:

- revokes the election (federal or state); or
- ceases to qualify as an S corporation; or
- violates the passive investment income restrictions on corporations with earnings and profits.

If the S corporation status is terminated, short period returns are required for the S corporation short year and the C corporation short year. For more information, get federal Publication 589, Tax Information on S Corporations.

During the five years after the termination or revocation of the S corporation status, the corporation may not make an election on form FTB 3560 unless the FTB consents.

**Federal termination/revocation.** A termination of a federal election under IRC Section 1362(d), that is not an inadvertent termination under IRC Section 1362(f), simultaneously terminates the S corporation election for California.

Report a federal termination by revocation no later than the last day allowed for filing the federal termination for that year.

To report a federal termination to the FTB, complete Part I; Part II, box 4; and Part IV.

**California termination/revocation.** An S corporation may terminate by revocation its S corporation status for California, without terminating its federal S corporation election. (R&TC Section 23801(f)(3)).

To terminate the S corporation status for California, complete Part I; Part II, box 5; Part III, columns J, K and L; and Part IV.

**California S Corporations with Nonresident Shareholders.** The corporation's S corporation status will be terminated if it fails to provide with the tax return filed for each income year:

- a statement by each nonresident shareholder consenting to be subject to tax on the shareholder's pro rata share of income attributable to California sources; and
- a list of shareholders.

### E When to File

**Report of federal election or California election.** An election is effective for the current income year, if this form is filed:

- before the 16th day of the third month of the income year the election is to take effect; or
- at any time during the prior income year.

For an election to be effective in a future income year, file this form in the income year before the year the election is to take effect. A California S corporation election made after the 15th day of the third month, but before the end of the income year, is treated as made for the next year. For example, if a calendar year corporation makes the election in April 1995, it is effective for the corporation's 1996 calendar year.

For purposes of this election, the income year of a newly formed corporation starts when it has shareholders, acquires assets, or begins doing business, whichever happens first.

**Note: A California S corporation revocation or an election by a federal S corporation to be a California C corporation which is not timely filed is void and will not be effective for any income year.**

**Termination by revocation.** File this form:

- before the 16th day of the third month of the income year if the revocation is effective for the first day of that income year; or
- after the 15th day of the third month of the income year if the revocation is effective for the first day of the next income year; or
- any time before the specific date the revocation is to take effect.

**Other terminations.** Notify the FTB of all other terminations as soon as the IRS notifies the corporation or as soon as the corporation is aware of engaging in any activity that causes a termination.

### F Where to File

Mail form FTB 3560 to:

**Franchise Tax Board  
P.O. Box 942857  
Sacramento, CA 94257-0540**

## Specific Instructions

### Part III

**Box C – Principal business activity and principal product or service.** Use the Business Activity Code Chart in the Instructions for Form 100S. Also, state the principal product or service.

**Line I – Selected income year.** IRC Section 1378 specifies that no corporation may make an election to be an S corporation for any income year unless the income year is a permitted income year. A permitted income year is an income year ending December 31 or any other income year that the corporation establishes a business purpose to the satisfaction of the IRS.

The California income year of an S corporation may not be different than the federal tax year, unless initiated or approved by the FTB.

**Column J and Column K – Shareholders' consent statement.** If the corporation checked Part II, box 3, each shareholder must consent to the election.

If the corporation checked Part II, box 2 or box 5, shareholders holding more than 50% of the shares of stock on the date of the election must consent to the revocation. List all shareholders in column J and provide consents from more than 50% of the shares of stock in column K.

**Column L – Stock owned.** If the election is made during the corporation's first income year for which the election is to take effect as an S corporation, list only the shares of stock for those shareholders who own shares of stock on the date of the election. However, any person who owned stock at any time during the portion of that year which occurs before the time the election is made, must consent to the election even though the stock has been sold or transferred.

**Column N – Shareholder's taxable year end.** If a shareholder's taxable year end is changed, enter the new taxable year. If the election is made during the corporation's first income year for which the election is to take effect as an S corporation, the corporation does not have to enter the taxable year of shareholders who sold or transferred all of their stock before the election was made, but who still must consent to the election for it to be effective for the income year.